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PATENT  
ATTORNEY DOCKET NO. DIVER1270-3

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Jay M. Short                          Art Unit: 1635  
Serial No.: 09/089,789                          Examiner S. McGarry  
Filed: June 3, 1998  
Title: CONSTRUCTION AND USE OF CATALOGUED NUCLEIC ACID  
LIBRARIES THAT CONTAIN ADVANTAGEOUSLY ADJUSTED  
REPRESENTATIONS OF DEFINED COMPONENTS

**Mail Stop: Petition**  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

**TRANSMITTAL SHEET**

Sir:

Transmitted herewith are documents related to the Petition For Revival Of An Application For Abandoned Unavoidably Under 37 C.F.R. §1.137(a). Included are the following:

1. Petition For Revival Of An Application For Abandoned Unavoidably Under 37 C.F.R. §1.137(a) including Exhibits A-C (11pgs);
2. Check No.: 544819 in the amount of \$110.00; and
3. Return postcard.

CERTIFICATION UNDER 37 CFR §1.8	
I hereby certify that the documents referred to as enclosed herein are being deposited with the United States Postal Service as first class mail on this date, September 22, 2003, in an envelope addressed to: Mail Stop: Petition Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.	
<i>CARA GRIFFONE</i> Name of Person Mailing Paper	
Signature <i>Cara Griffone</i>	Date 9/22/03

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104703-159195

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OFFICE OF PETITIONS

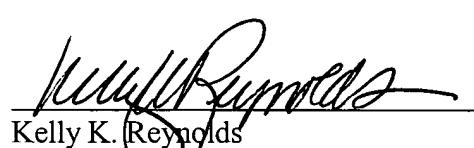
In re Application of  
Jay M. Short  
Application No.: 09/089,789  
Filed: June 3, 1998  
Page 2

PATENT  
Attorney Docket No.: DIVER1270-3

Enclosed is a check in the amount of \$110.00, the petition fee to revive an unavoidably abandoned application. No additional fees are believed due with the present response. However, please charge any additional fees, or make any credits, to Deposit Account No. 50-1355. If the Examiner would like to discuss any of the issues raised herein, Applicant's representative can be reached at (858) 638-6724.

Respectfully submitted,

Date: 9/22/03

  
Kelly K. Reynolds  
Registration No. 51,154  
Telephone: (858) 638-6724  
Facsimile: (858) 677-1465

GRAY CARY WARE & FREIDENRICH LLP  
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ATTORNEY DOCKET NO.: DIVER1270-3

# 21

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Jay M. Short Art Unit: 1635  
Application No.: 09/089,789 Examiner: S. McGarry  
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REPRESENTATIONS OF DEFINED COMPONENTS

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Commissioner for Patents  
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Alexandria, VA 22313-1450

**PETITION FOR REVIVAL OF AN APPLICATION FOR ABANDONED**  
**UNAVOIDABLY UNDER 37 C.F.R § 1.137(a)**

Sir:

Responsive to the Notice of Abandonment mailed February 3, 2003, Applicant hereby petitions for revival of the above-identified application under the provisions of 37 C.F.R. § 1.137(a) on the grounds that the application was abandoned unavoidably by the U.S. Patent and Trademark Office. The above identified application became abandoned for Applicant's alleged failure to file a response to the Office Action mailed on May 9, 2002. It is respectfully submitted that Applicant did not file a response to the Office Action, as the Office Action was never received by Applicant. As Applicant was unable to submit a timely response, revival of the application is respectfully requested.

An Office Action was allegedly mailed by the Patent and Trademark Office on May 9, 2002. The initial due date for response was therefore August 9, 2002, with extensions of time available until November 9, 2002. No response to the Office Action was mailed by Applicant

Adjustment date: 11/05/2003 AKELLEY  
09/26/2003 AWONDAF1 00000106 09089789  
01 FC:1452 -110.00 OP

09/26/2003 AWONDAF1 00000106 09089789  
01 FC:1452 110.00 OP  
Repn. Ref: 11/05/2003 AKELLEY 0012345200  
DRA:501355 Name/Huuber:09089789  
FC: 9204 \$110.00 CR

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SEP 26 2003

OFFICE OF PETITIONS

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I hereby certify that the documents referred to as enclosed herein are being deposited with the United States Postal Service as first class mail on this date, September 22, 2003, in an envelope addressed to: Mail Stop: Petition Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.	
<i>CARA GRIFONE</i> Name of Person Mailing Paper	
<i>Cara Grifone</i> Signature	9/22/03 Date

because Applicant never received a copy of the May 9, 2002 Office Action. Therefore, it was impossible for Applicant to have complied with the November 9, 2002 final deadline for response.

A search of the file jacket and docket records indicated that the Office Communication allegedly mailed May 9, 2002 was not received by Applicant. Attached as "Exhibit A" is a copy of the docket record where the Office Communication would have been recorded and docketed, had it been received in this office. Specifically, the Office Communication would have been entered on the second page of this print out, between the entries for "US-3 Month Offi Follow Up Date" and "Supp Response Filed." However, no entry is found for receipt of any Office Communication with a mailing date of May 9, 2002.

Applicant's delay from the time the reply was initially due until receipt of the Notice of Abandonment, a copy of which is attached hereto as "Exhibit B," was due to the fact that Applicant was unaware that the Office Action had ever been mailed by the Patent Office. Applicant's last action with respect to this application was to file a Supplementary Amendment on September 4, 2002. It should have been apparent to the Patent Office from this response that the Office Action mailed May 9, 2002 by the Patent Office had not been received by Applicant. On the first page of the Supplementary Amendment, Applicant stated that the amendment was "[I]n supplemental response to the Office Action mailed herein on *February 12, 2001...*" (emphasis added). Obviously, Applicant had not received any Office Action on May 9, 2002, or Applicant would have responded to that Action in the Amendment filed September 4, 2002.

Applicant received the Notice of Abandonment for the above application on February 7, 2003. Upon receipt of the Notice, Applicant immediately determined the status of the situation and prepared the present petition. Specifically, the actions taken with regard to this application from the date of receipt of the Notice of Abandonment were as follows:

<u>Date</u>	<u>Action taken</u>
February 18, 2003	Attorney K. Reynolds left a message for Examiner McGarry

<u>Date</u>	<u>Action taken</u>
February 24, 2003	Examiner McGarry returned phone call to Attorney K. Reynolds and stated that he would attempt to locate a copy of the Office Communication mailed May 9, 2002
April 3, 2003	Attorney K. Reynolds left a message for Examiner McGarry
April 7, 2003	Examiner McGarry and Attorney K. Reynolds spoke regarding results of PTO's attempt to locate a copy of the Office Communication mailed May 9, 2002
April 9, 2003	Examiner McGarry and Attorney K. Reynolds spoke regarding results of PTO's attempt to locate a copy of the Office Communication mailed May 9, 2002
April 21, 2003	Examiner McGarry recommended that due to PTO's inability to locate a copy of the Office Communication mailed May 9, 2002, that a Petition to Withdraw the Holding of Abandonment be filed.
April 22, 2003	Applicant filed a Petition for Withdrawal of the Holding of Abandonment
August 8, 2003	Applicant received notice of the denial of the Petition for Withdrawal of the Holding of Abandonment
August 13, 2003	Attorney K. Reynolds left a message for Examiner McGarry again requesting a copy of the Office Communication mailed May 9, 2002
August 19, 2003	Attorney K. Reynolds left a message for Examiner McGarry
August 19, 2003	Examiner McGarry called back, stating that he was out of the office until August 25, 2003
August 27, 2003	Attorney K. Reynolds left a message for Examiner McGarry
August 27, 2003	Examiner McGarry called back, stating that he was again attempting to locate a copy of the Office Communication mailed May 9, 2002
August 29, 2003	Attorney K. Reynolds left a message for Examiner McGarry
September 10, 2003	Examiner McGarry returned phone call to Attorney K. Reynolds and confirmed that the PTO cannot locate a copy of the Office Communication mailed May 9, 2002. Examiner McGarry recommended that a Petition to Revive be filed without a response to the Office Communication mailed May 9, 2002, as no Communication can be found.

In the April 21, 2003 phone call with Examiner McGarry, it was determined that the Patent and Trademark Office is unable to locate a copy of the Office Action allegedly mailed May 9, 2002. A copy of the Interview Summary stating that the Patent Office is unable to locate

In re Application of: Jay M. [REDACTED]ort  
Application No.: 09/089,789  
Filed: June 3, 1998  
Page 4

PATENT  
Attorney Docket No. DIVER1270-3

a copy of the Office Action is attached hereto as "Exhibit C." The unavailability of a copy of the Office Action allegedly mailed May 9, 2002 was confirmed in the September 10, 2003 phone call between Examiner McGarry and Attorney Kelly Reynolds. Therefore, this petition is not accompanied by any required response, as no Office Action is available for Applicant to respond to.

The present petition is accompanied by: 1) the petition fee of \$110.00, as set forth in 37 C.F.R. 1.17(l) and required under 37 C.F.R. 1.137(a)(2); and 2) a showing as to the reasons for the delay from the time for filing a required reply until the filing of the present petition, as required under 37 C.F.R. 1.137(a)(3). As the requirements for revival of an unavoidably abandoned application under 37 C.F.R. 1.137(a) have been met, granting of the present petition is respectfully requested.

Enclosed is a check in the amount of \$110.00, the petition fee to revive an unavoidably abandoned application. No additional fees are believed due with the present response. However, please charge any additional fees, or make any credits, to Deposit Account No. 50-1355. If the Examiner would like to discuss any of the issues raised herein, Applicant's representative can be reached at (858) 638-6724.

Respectfully submitted,

Date: 9/23/03

  
Kelly K. Reynolds  
Registration No. 51,154  
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